

**HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT**

ORDINANCE NO. 19

AN ORDINANCE ESTABLISHING THE RIGHT TO FISH

**THE BOARD OF COMMISSIONERS OF THE HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT DOES HEREBY ORDAIN AS FOLLOWS:**

A new Ordinance, titled "Fish and Seafood Operations" to conserve, protect, and encourage the development of seafood operations and limit the loss of fishing and seafood operations by limiting the circumstances under which commercial seafood and fishing operations that adhere to generally accepted practices may be subject to complaints or potential legal action and to provide a means of attempting to resolve complaints.

FISH AND SEAFOOD OPERATIONS

- 1. Purpose and Findings**
- 2. Definitions**
- 3. Limitations of Actions**
- 4. Procedures for Complaints, Investigations, and Resolution**

1. Purpose and Findings

- A. It is the declared policy of Humboldt Bay Harbor, Recreation and Conservation District (District) to conserve, protect, and encourage the development of commercial fishing and seafood operations at Woodley Island Marina. It is in the public interest to promote a clearer understanding between the seafood and fishing industry and the general public concerning the normal operations and potential inconveniences associated with the seafood and fishing industry.
- B. It is also the policy to reduce the loss of fishing and seafood operations by limiting the circumstances under which commercial seafood and fishing operations that adhere to generally accepted practices may be subject to complaints or interference by the District's permittees, tenants and other persons using District properties and to provide a mediation process to attempt to resolve such complaints.
- C. This ordinance shall not in any way restrict or impede the authority of the State or County to protect the public health, safety, or welfare.
- D. This ordinance is not intended to and shall not modify or abridge local, state or federal laws relating to health, safety, zoning, licensing requirements, or environmental standards. The provisions of this ordinance do not supersede the County Land Use Ordinance and do not alter in any way the District, County, State or Federal permitting process.

2. Definitions

As used in this ordinance, the following terms shall have the meanings indicated:

- A. Commercial Seafood or Fishing Operation - A commercial seafood or fishing operation includes, but is not limited to, all matters of harvesting seafood and charter boat fishing, including boats and patrons leaving and returning at all hours; boat and gear maintenance, vessel lights and operation of generators, bait, ice, fish totes, forklift operation, net repairs, trolling poles and crab tank installation, vessel retail sales; the commercial raising or holding of seafood, bait by means such as, but limited to aquaculture, mariculture and commercial oyster farming; and associated equipment.
- B. Generally Accepted Seafood and Fishing Industry Practices - Those methods used in connection with the commercial seafood and fishing industries which are in compliance with any District permit or lease provisions and do not violate the County Land Use Ordinance or applicable federal, state, or local laws, public health, safety or welfare including practices which are recognized as the best management practices by various and appropriate government agencies for the harvesting of seafood. If a generally accepted practice has not been identified by a government agency, the District may consult with individuals with a working knowledge of the seafood industry and other individuals, businesses, or governmental agencies that the District deems appropriate.

3. Limitations of Actions

- A. When conducted within standard and generally accepted seafood and fishing industry practices, tenants, customers, or permittees of the district or district tenants, visitors, employees and neighboring property owners shall have no recourse against the inherent effects of commercial seafood and fishing operations conducted by the District's tenants, permittees or on property under the jurisdiction of the District at Woodley Island Marina. These inherent effects include, but are not limited to, smoke, noise, vibration, odors, fumes, dust, the operation of machinery of any kind during any twenty-four period, movement of equipment or boats.
- B. A private action may not be maintained by any District tenant, customer, permittee or employee of the District or visitors to District premises with respect to any seafood or fishing operation conducted substantially in accordance with generally accepted seafood and fishing industry practices on the grounds that the seafood or fishing operation interferes or has interfered with the use and enjoyment of property, whether public or private, if the seafood or fishing operation has been in existence at the site for at least one year and such operation was not a nuisance at the time it began operation.
- C. Notwithstanding any provision of this section, no action alleging that a seafood or fishing operation has interfered with the reasonable use or enjoyment of real property or personal well-being by any tenants, customers, or permittees of the District or district tenants, visitors, employees may be filed in a court if the claimant has not sought resolution under this ordinance.

4. Procedures for Complaints, Investigations, and Resolution

- A. Complaints. Complaints of nuisances that allegedly affect the reasonable use and enjoyment of property at Woodley Island Marina shall be made in writing to the District. Complaints that allege an impact to public health also shall be forwarded to the County Health Department.

B. Investigation. Upon receipt of a written complaint, a copy shall be provided to all parties involved and the District shall initiate an investigation. The District's Executive Director or his or her designee shall conduct the investigation. The District shall contact all parties involved in the dispute to ensure full understanding of the nature of the complaint and obtain additional information and documentation as may be necessary. When necessary, the District may enlist the professional expertise of qualified experts in the relevant field to clarify the issues pertaining to the complaint. Once the investigation is complete, the District shall prepare a staff report with all pertinent information and send the report to all parties.

C. Resolution.


- 1) Upon receipt of the investigative report from the District, within 10 business days the complaining party shall advise the District in writing whether it wishes to drop its complaint or proceed to a mediation with the other party or parties.
- 2) Within 10 business days of receipt of the request for mediation, the parties shall mutually agree to the selection of a mediator to schedule a mediation hearing. If the parties cannot agree to a mediator, the parties shall request the judge of the Humboldt County Superior Court with primary responsibility for civil matters, or the presiding judge of that court, to select a mediator from a list of potential mediators provided jointly or individually by the parties. The parties shall bear the expense of the mediator jointly. Notice shall be sent to all parties at least 10 days prior to the hearing by the mediator.
- 3) The mediation will discuss whether the particular practice does or does not conform to generally accepted practices. The mediator will attempt to facilitate a resolution acceptable to all parties but shall have no authority to make any binding decision or determination of facts. A party may not maintain a legal action unless the mediation process provided by this ordinance has been exhausted.

THIS ORDINANCE PASSED AND ADOPTED THIS 25th DAY OF JUNE, 2015 BY THE BOARD OF COMMISSIONERS OF THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT BY THE FOLLOWING POLLED VOTE:

AYES: NEWMAN, DALE, MARKS, WILSON, HIGGINS

NOES:

ABSENT:



RICHARD MARKS, President
BOARD OF COMMISSIONERS

ATTEST:



GREG DALE, Secretary
BOARD OF COMMISSIONERS